

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS

3
4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,)
7)
8) No. 13-10048-FDS
9 vs.)
10)
11 KING BELIN,)
12 Defendant.)

13
14
15 BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

16 STATUS CONFERENCE

17
18 John Joseph Moakley United States Courthouse
19 Courtroom No. 2
20 One Courthouse Way
21 Boston, MA 02210

22
23 April 7, 2014
24 2:00 p.m.

25
26 Valerie A. O'Hara
27 Official Court Reporter
28 John Joseph Moakley United States Courthouse
29 One Courthouse Way, Room 3204
30 Boston, MA 02210
31 E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by JOHN A. WORTMANN, JR.,
4 ESQ., 1 Courthouse Way, Suite 9200, Boston, Massachusetts
02110;

5 For the Defendant:

6 Ian Gold, Attorney at Law, 2 Clock Tower Place,
7 Suite 260 EF, Maynard, Massachusetts 01754.

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1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. Please be seated.
3 Court is now in session in the matter of United States vs.
4 King Belin. This is Case Number 13-cr-10048.

5 Counsel, please note your appearances for the record.

6 MR. WORTMANN: Your Honor, good afternoon,
7 John Wortmann for the United States.

8 THE COURT: Good afternoon.

9 MR. GOLD: Good afternoon, Ian Gold on behalf of the
02:06PM 10 defendant, King Belin.

11 THE COURT: Good afternoon. This is a status
12 conference in the case. I have pending defendant's motion for
13 reconsideration of the denial of the motion to suppress. That
14 was filed on March 31st, I guess. Is that one week ago? Yes,
15 one week ago. Mr. Wortmann, does the government expect to file
16 an opposition?

17 MR. WORTMANN: Well, your Honor, my recollection is
18 that one of the issues that we were going to discuss today was
19 whether or not the Court wanted me to file an opposition. I do
02:07PM 20 not believe that an opposition is warranted. I'm happy to
21 explain to you why I believe that.

22 THE COURT: Why don't we handle it this way. I've
23 read the motion, and I'm not going to deny it on the grounds
24 that it's a motion for reconsideration, I'm going to take it on
25 the merits. I'll let Mr. Gold speak, and then if you're

1 prepared to address it orally, we can handle it that way.

2 MR. WORTMANN: Yes.

3 THE COURT: And if there's any issue --

4 MR. WORTMANN: If you want me to file something, I'm
5 happy to do it, your Honor.

6 THE COURT: Mr. Gold, why don't I hear from you first.

7 MR. GOLD: Well, your Honor, I think I can respond to
8 questioning, or apart from the papers, the way we put the
9 motion for reconsideration forward is, respectfully, an error
02:08PM 10 in the analysis as to when the stop actually took place from
11 which we think the better analysis flows.

12 When you locate the stop at the moment that Mr. Belin
13 is compelled to turn around, at that moment, in practical
14 terms, as we say, you remove the nervousness, so that is a
15 factor which is removed from the analysis.

16 We also urge upon the Court a reframing, I guess I'll
17 call it, of the scene and the different factors that are there.
18 What I'm calling the reframing I think we expressed as looking
19 back at the cases and attempting to make meaningful analogies
02:09PM 20 from the previous cases that we have from the First Circuit and
21 elsewhere that there isn't this organic -- I think everyone
22 would agree that this isn't simply a tally of factors or a
23 checklist, that there's got to be this meaningful relationship
24 between the purpose of the stop and kind of defining the scope
25 and extent of what's permissible, what's reasonable under the

1 circumstances, and the factors that were marshalled by the
2 government, although they are marshalled in prior cases here,
3 do not fit in the same way as the argument that we're making
4 when in fact what we have a stop for a particular purpose, we
5 have questioning, and it's simply the breaking from the group
6 that appears to draw the police officer's attention, then he
7 recognizes him.

8 And the rule which emerges from the sequence in
9 allowing the material to come into evidence not being
02:10PM 10 suppressed is one that is simply based on failure to comply
11 with questioning, if you're known to police gives this kind of
12 general warrant. That in sum is the essence of our argument in
13 reconsideration, your Honor.

14 THE COURT: All right. Mr. Wortmann.

15 MR. WORTMANN: Your Honor, so the fallacy in
16 Mr. Gold's argument came out when he used the word, "compel."
17 He says that Mr. Belin was compelled to stop, and it's not true
18 on the facts, and it's an incorrect statement of the law. You
19 know, his suggestion is that because a police officer calls out
02:11PM 20 to somebody and follows him, that that's enough to constitute a
21 seizure, and he's just wrong.

22 The one case that he cites for the proposition is
23 *United States vs. Camacho*, and if you look at *Camacho*, what
24 *Camacho* involved was three officers cutting off somebody's
25 travel path, demanding, making accusatory accusations and

1 bending him over the hood of a car, and to suggest that that
2 case is analogous to what we have here just makes no sense, and
3 it's also important because of all the cases and really the
4 settled case law that Mr. Gold completely ignores.

5 All right. Consider first where it all starts, which
6 is *Mendenhall*, and *Mendenhall* talks about, and here's what it
7 said at 446 U.S. 554, "Relevant circumstances as to whether a
8 seizure takes place include the threatening presence of several
9 officers, the display of a weapon by an officer, some physical
02:12PM 10 touching of the person of the citizen or the use or language or
11 tone indicating that compliance with the officer's request
12 might be compelled."

13 Okay. Mr. Belin goes 0 for 4 on that, your Honor,
14 0 for 4. There's nothing in *Mendenhall* that even suggests that
15 this was a seizure in this case, and, more importantly, so he
16 ignores a really substantial statement in *United States vs.*
17 *Smith* when he talks about because really the notion is, oh,
18 God, I see a police officer approaching me, that means I have
19 to stop because it makes me nervous, because it makes me upset,
02:12PM 20 and in *Smith*, and I'm going to read this for a little bit
21 because I think it's so on point and so clear.

22 I'm at 422 Fd. 3d 28. "Since most tend to feel some
23 degree of compulsion when confronted by law enforcement
24 officers asking questions, such discomfort cannot be a measure
25 of Fourth Amendment seizure. If it were, officers would

1 effectively be barred from approaching citizens at all absent
2 full blown probable cause."

3 In *Mendenhall*, the Supreme Court made clear that
4 "Characterizing every street encounter between a citizen and
5 the police as a seizure would impose wholly unrealistic
6 restrictions upon a wide variety of legitimate law enforcement
7 practices without the authority to approach and briefly
8 question a citizen, those who were innocent might be falsely
9 accused, those who are guilty, might wholly escape prosecution,
02:13PM 10 and many crimes would go unresolved. In short, the security of
11 all would be diminished."

12 Then in order to avoid such an unsatisfactory result,
13 the Court has made clear that "Only when a citizen's freedom is
14 objectively restrained is there any foundation for invoking
15 constitutional safeguards. No seizure occurs when an officer
16 approaches a citizen to ask a question unless it was
17 objectively reasonable for that person to believe that he was
18 compelled and stay to answer the question."

19 And if you look at all the cases we cited in the
02:13PM 20 original motion, your Honor, there is no compulsion here.
21 Mr. Belin had a choice. He could have stopped walking, he
22 could have kept walking, he could have said, no, sorry, I'm
23 busy or I've got to go, and at that point, he would have put
24 the issue in focus, and this net would have had a choice,
25 either to say stop or to say, okay, I'll talk to him next time,

1 but he didn't do that. He made that choice to just turn around
2 and say, "Okay, what do you want?"

3 There was nothing about the events leading up to it,
4 which are not in dispute, and there's nobody saying that there
5 are other police officers around, that Bissonnette commanded
6 him to stop, that up until the second question was asked that
7 there was any physical contact with him, there's just nothing
8 to support the notion that the stop took place, and until
9 Bissonnette put his hand on him and started the pat frisk that
02:14PM 10 there was anything that could even remotely constitute a
11 seizure.

12 Now, there are other flaws in the argument, and the
13 next one that I'll talk about is a broad conceptual one, which
14 is ironic because Mr. Gold says he's not doing it, and that is
15 to look at each individual factor and say, well, that's not
16 enough and forget that what we're looking at is the totality of
17 the circumstances that appear to the officers.

18 He said that at the last page, he says, well, of
19 course, I wouldn't do that, but then every time that he looks
02:15PM 20 at something, the neighborhood, well, that's not enough, the
21 gang, that's not enough, his nervousness, that's not enough,
22 but, of course, looking at the totality, which is exactly what
23 your Honor recognized when you decided the case from the bench
24 in the first place, and it was correct. There's no grounds.
25 You know, the notion that the fact that either A,

1 Officer Bissonnette, as he says in his motion for
2 reconsideration several times candidly said, "Yeah, I was
3 probably going to stop him regardless."

4 His subjective intentions, the law makes clear again
5 and again and again have nothing to do, and Bissonnette had the
6 right, and it's good police work to do what he did, no matter
7 what he was ultimately planning on, he let the scene develop,
8 he let things happen, and the more things happened, the more
9 Mr. Belin piled on the justification for the stop and for the
02:16PM 10 seizure.

11 I think, you know, in view of all those circumstances,
12 your Honor, you know, the point about the hoodie is not just
13 that it was improper for the weather but also that it was
14 sufficiently baggy to allow, and as your Honor said in the
15 findings that you made, if he had been wearing a tight T-shirt,
16 that would have been a very different factor.

17 The idea that there wasn't sufficient evidence of a
18 high crime neighborhood is belied both by Officer Bissonnette's
19 testimony and by the documents that were attached from the
02:16PM 20 Boston Regional Intelligence Center showing the prevalence of
21 firearm and firearm-related pretenses in the area of Norfolk
22 Park, and although Mr. Gold's repeatedly, at least once or
23 twice, said how candid Officer Bissonnette, he says, "Well, he
24 must have been lying about the gang because it doesn't appear
25 in the report."

1 None of that makes any sense, your Honor. You have
2 the opportunity to assess the credibility of this officer. You
3 have the opportunity to look at the totality of the
4 circumstances, and what do we want our police officers to do in
5 that situation? I suggest exactly what Officer Bissonnette
6 did, which is, be patient, wait, make sure that he was right,
7 and then take appropriate actions to protect himself and the
8 other people in the area.

9 Both the stop and the frisk were justified, and I ask
02:17PM 10 that your Honor deny the motion for reconsideration without any
11 further briefing.

12 THE COURT: All right. Mr. Gold.

13 MR. GOLD: Thank you, your Honor. I think this was
14 helpful, Mr. Wortmann's response was helpful. I think we're
15 making a factual argument about the stop, which is a little bit
16 different, I guess, than he's implying we are. You know, we
17 cited some social science research. I wanted to let the Court
18 know that we had ordered the textbook that we cite in the
19 papers, and it's available at the First Circuit Library through
02:18PM 20 inter-library loan.

21 The notion is, and this is Mr. Wortmann's own
22 question. He said, "So you followed him?" Remember, and
23 during the hearing, it emerged that when Mr. Belin politely
24 nodded and said I decline to engage with you and continued on
25 his way with the intention to stop him, he followed him

1 aggressively closing the distance until he was on top of him,
2 within an arm's distance, and we argue compelling him to turn
3 around because that's the natural human reaction when a police
4 officer is within your personal space, you have the option to
5 run, but you don't have the option to continue to walk like a
6 normal person.

7 The police officer is commanding you by his physical
8 presence entering your physical space, and I don't think we
9 need social science to buttress that, we just need a little bit
02:19PM 10 of imagination to think about how that would look, how long
11 could they walk an arm's length or 18 inches from each other
12 toward the park if he really wanted to decline, to decline to
13 submit to questioning.

14 It's simply untenable. It doesn't make sense, and it
15 leads to a distorted view of the sequence of what occurred.
16 That is what it leads to, and, in fact, in the Court's opinion,
17 these things are sort of discussed together and separates them
18 out is helpful, I think leads to the correct analysis. Once
19 the stop occurs, he stopped, then there's a question, then
02:20PM 20 there's a frisk.

21 The other point we make, and, again, this is based of
22 the reading of the cases, we've been interacting with the
23 cases, is that some of the factors that are cited may more
24 meaningfully be connected to the decision to frisk than they
25 are to the initial decision as to whether there's reasonable

1 suspicion that criminal activity is afoot based on a read of
2 the circumstances.

3 We can't just ignore context and throw out that they
4 heard a fight for girls, they stopped, they wanted to question
5 these guys, somebody walks off, I'm going to follow that guy,
6 and there Mr. Wortmann talks about subjective intention because
7 it says so in a case, and we all know from *Whren* it is not
8 relevant, but it is pertinent because what the Court needs to
9 do is get to the right result, a read of what happened, and we
02:20PM 10 learned in the hearing that the distances involved, we have
11 this police officer closing the distance within seconds. He
12 says by his own account, "I'm within an arm's length when the
13 guy spins around."

14 I will say Mr. Wortmann I believe misremembers the
15 *Camacho* case. In the *Camacho* case, there are two individuals,
16 there are two police officers. The cop, almost identically,
17 the police officer almost identically to our situation, they
18 just pull the car in front of them. That's a display of
19 official authority, of course, and there the officer orders
02:21PM 20 *Camacho's* companion to put his hands on the vehicle. While
21 *Camacho* is not ordered to stop, it's simply that the stop
22 occurs at that point, according to the First Circuit. That is
23 less than what we have here.

24 Arguably, if Mr. Belin had stopped with the other
25 group of four, and I note that they were all, I'm not sure what

1 the reasons were in those individual cases, but they were all
2 without the walking away, without all that, they were all
3 frisked, or three of them were, and I'm not sure if those
4 searches were supported by reasonable suspicion or reason to
5 believe that they were armed and currently dangerous.

6 The dividing conquer strategy, that's true, I just --
7 I don't -- I guess the answer to that is when Mr. Wortmann says
8 we're guilty of what the cases identify as a problem, just kind
9 of isolating out factors, I'm striving not to do that. I will
02:22PM 10 say that what that leads to is that any search with two factors
11 can lead to a totality.

12 The only way to kind of analytically build up a
13 challenge to a search is to look at the factors discretely,
14 even if you put them back together in the end, and what we have
15 here, again, we're saying is that the factors weren't
16 organically related to the context. They were there. They
17 certainly are factors that have been identified in other cases
18 as supporting reasonable suspicion in those cases.

19 Take gang involvement. There was a call relating to
02:23PM 20 gang involvement. There's gang involvement in the Am case
21 where it's kind of intrinsically related to the reason for the
22 stop.

23 Again, a lot of these factors simply can be blanket
24 inner city factors. If you are suspected of being in a gang,
25 can you be searched? If you are wearing a hoodie, can you be

1 searched without more? If a police officer can marshal three
2 factors in any instance, will that justify, will that make
3 reasonable suspicion? Those are the stakes, your Honor, and we
4 would argue that in this circumstance, we don't have a call
5 bringing them because there's a suspicion of gang activity, we
6 simply have a late afternoon or early evening, full sunlight
7 out and some individuals walking down the street when they are
8 confronted by police officers in an unrelated, for an unrelated
9 call.

02:24PM 10 So, again, I think I've mentioned this already, but I
11 see in my notes that it's at the end. The subjective
12 intention, we're not arguing that it's independently relevant,
13 but for the right factual read, it helps to understand because
14 the body language is important, and it gives us a sense of what
15 the body language was, and it's Mr. Wortmann's own words at the
16 grand jury when he was questioning Mr. Belin that kind of
17 sealed the deal from our perspective that when he said, "So it
18 became clear that he wasn't going to be able to get away from
19 you, right, you walked after him until it became clear?"

02:25PM 20 That is a very telling comment, and I think it gives
21 us a sense of what was happening. He commanded him to turn
22 around as if he had grabbed his arm, which he probably would
23 have done if Mr. Belin had not in fact turned around as a
24 submission to that assertion of authority.

25 THE COURT: All right. Anything further,

1 Mr. Wortmann?

2 MR. WORTMANN: Well, just that, you know, Mr. Gold
3 continues to use these words like "command" that have no
4 bearing on what happened, have no bearing on the evidence that
5 you heard, your Honor, and it's just he's wrong on the facts
6 and he's wrong on the law.

7 THE COURT: All right. I'm going to deny the motion
8 for reconsideration. I think one of the key central issues
9 here, the nature of this initial encounter, what the officer --
02:26PM 10 well, what he was subjectively thinking, of course, is not
11 relevant, but what happened between the officer and the
12 defendant.

13 The basic problem, as I see it, is the law has framed
14 the issue sometimes in a way that really doesn't to me make a
15 lot of sense, whether a reasonable person would feel free to
16 decline the officer's request or otherwise terminate the
17 encounter.

18 Most people, as Mr. Gold points out, feel some
19 discomfort or lack of freedom in any kind of interaction with
02:26PM 20 an officer, and so the standard is phrased I think somewhat
21 poorly or awkwardly perhaps, and I think there's lots of case
22 law that puts a gloss on that. The true subjective feeling of
23 freedom is not really what's at issue there or even an
24 objective feeling of freedom, but for the reasons I indicated,
25 I'm not making myself very articulate here, but for the reasons

1 stated in my prior denial of the motion, I continue to believe
2 that the standard, which is an objective one, has been met both
3 for a Terry stop and for a subsequent frisk, and I think there
4 is not Fourth Amendment violation for the reasons previously
5 indicated, and, again, while I'm considering the motion to
6 reconsider on its merits and without regard to whether I should
7 handle a motion for reconsideration differently, I'm going to
8 nonetheless deny it.

9 Where do we go from here? Mr. Gold.

02:27PM 10 MR. GOLD: Your Honor, the next I guess agenda item
11 would be to schedule a trial. The last I've discussed the
12 issue with Mr. Belin is that's where he wanted to go.

13 THE COURT: Okay.

14 MR. GOLD: I was talking about this, as the Court
15 knows, as we've discussed in other cases, I'm in the process of
16 departing the Federal Defender's Office.

17 THE COURT: Do you have a departure date?

18 MR. GOLD: I do. It's actually this month,
19 April 23rd, so I'm sure we can't try the case between now and
02:28PM 20 then, but I was going to just tell the Court that in
21 discussions with Ms. Conrad, it appears that I will be allowed
22 to, or to depending on the individual case, I'll be making
23 motions in some cases to remain as counsel of record pursuant
24 to the Criminal Justice Act.

25 THE COURT: Is that -- I mean, if you're not on the

1 panel, will that work? In other words, can you be paid for it
2 or can you do it at all? Obviously, I don't have any question
3 about your qualifications, the question is legally if you're
4 neither a defender nor on the CJA panel, can you be appointed?

5 MR. GOLD: Well, that's what we've looked at.
6 Apparently, you can. There's a provision in the Criminal
7 Justice Act and in the local plan that allows, you know, to
8 preserve values on continuity of representation, conservation
9 of resources for a nonpanel attorney in certain circumstances
02:29PM 10 to be appointed.

11 THE COURT: Okay.

12 MR. GOLD: But we're having a meeting about which
13 cases I will do that in and which cases make sense to leave
14 with the office tomorrow afternoon.

15 THE COURT: Okay.

16 MR. GOLD: So what I propose, I suppose, is to the get
17 the issue of representation sorted out and then come back in a
18 week with some proposed dates.

19 THE COURT: All right. A week may be a little long.

02:29PM 20 Mr. Wortmann, how long do you think this case is going to take
21 to try, two or three days?

22 MR. WORTMANN: I think that's right, your Honor.

23 THE COURT: Do you agree with that, Mr. Gold?

24 MR. GOLD: I don't see how it could take longer, yes.

25 THE COURT: Let me look at the calendar and put out

1 some possible times. We can try this relatively quickly,
2 assuming Mr. Gold stays on the case. Well, I might have to
3 move some things around, but the week of May 12th is doable, as
4 is the week after Memorial Day, May 27th. I'm out the
5 intervening week, May 9th.

6 One of the problems I have being in Boston as opposed
7 to Worcester is in Worcester I could impanel a jury any time I
8 wanted to, impanel on a day other than the Monday, but it's
9 possible that we could make arrangements to begin the trial
02:31PM 10 later in the week and spill over in the week. I'm out part of
11 the week of June 2nd.

12 MR. WORTMANN: Your Honor, I have vacation that week.

13 THE COURT: Which week?

14 MR. WORTMANN: But May 12th sounds like it would be
15 just fine.

16 THE COURT: May 12th works for me. If you're on the
17 case, Mr. Gold, does that work for you?

18 MR. GOLD: If I'm on the case, I could certainly do
19 that.

02:31PM 20 THE COURT: Why don't we block off May 12th. Why
21 don't we reconvene sort of as quickly as we possibly can.
22 Obviously, I'm quite familiar with the case at this stage, and
23 it's not complicated, but there are still things to do.

24 MR. WORTMANN: The only hesitation, your Honor, is
25 that I need to call witnesses today just to make sure that

1 they're available, and I'll do that promptly.

2 THE COURT: Right. I'm not going to formally set the
3 trial date of May 12th, but I want you to block that off, and
4 let's circle back. You're having your meeting --

5 MR. GOLD: Tomorrow afternoon.

6 THE COURT: Why don't we circle back, let's see, well,
7 I can do Wednesday morning or Thursday morning.

8 MR. WORTMANN: Either one is fine with me, your Honor.

9 THE COURT: How about Thursday morning at 10?

02:32PM 10 MR. GOLD: Yes.

11 THE COURT: All right. Further status, Thursday
12 morning, April the 10th at 10:00. I want the parties to I
13 guess first confirm that Mr. Gold is going to be counsel,
14 confirm that under the CJA Act and our local plan that I can
15 appoint him, confirm that the length of the trial is going to
16 be three days, at most, probably closer to two, I'll set a
17 timetable for pretrial filings. I guess, Mr. Gold, if you're
18 going to go off the case, I'd like to know --

19 MR. GOLD: What the game plan is.

02:33PM 20 THE COURT: -- what the game plan is, and if someone
21 else in the office is going to take over. Ms. Conrad keeps
22 telling me how flat out everyone is, and my guess is probably
23 you're going to stay on the case unless you've got prepaid
24 tickets to New Zealand or something, but, anyway, we'll see,
25 It's your office's decision, and we'll take it from there.

1 MR. WORTMANN: I would ask for the time between today
2 and Thursday be excluded.

3 THE COURT: Any problem with that?

4 MR. GOLD: No objection.

5 THE COURT: All right. I'm going to exclude the time
6 between April 10th and today in the interests of justice in
7 order to provide for pretrial preparation and to address this
8 issue of continuity of counsel, and I find that the ends of
9 justice -- I've said this phrase 300 times in the course of my
10 career, and I'm stumbling over it now as I have to think about
11 it. The ends of justice served by taking that action outweigh
12 the interests of the parties and the public in a speedy trial,
13 and I'll enter a written order to that effect. It's going to
14 be tough when I get up into my 70s to remember what it is I'm
15 supposed to say, but I'm still hanging on there.

16 MR. WORTMANN: Hopefully, we'll all work together,
17 your Honor.

18 THE COURT: Anything further, Mr. Wortmann?

19 MR. WORTMANN: No, thank you, your Honor.

02:35PM 20 THE COURT: Mr. Gold?

21 MR. GOLD: No, Judge, thank you.

22 (Whereupon, the hearing was adjourned at 2:35 p.m.)
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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript,
Pages 1 through 21 inclusive, was recorded by me
stenographically at the time and place aforesaid in Criminal
Action No. 13-10048-FDS, UNITED STATES OF AMERICA vs.
KING BELIN and thereafter by me reduced to typewriting and is a
true and accurate record of the proceedings.

Dated this 23rd day of December, 2015.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER